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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,510	11/30/2001	Larry W. Field	C0013	6565
21495	7590	05/06/2004	EXAMINER	
CORNING CABLE SYSTEMS LLC			HOOK, JAMES F	
P O BOX 489			ART UNIT	
HICKORY, NC 28603			PAPER NUMBER	

3752

DATE MAILED: 05/06/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,510

Applicant(s)

FIELD, LARRY W.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 2, 8-10, 17, 19-22, 25-27, 29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 11-16, 18, 23, 24 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's request to have claims 24 and 28 examined at this time is accepted. However, since these claims could have been rejected in the first office action, the addition of these two claims to the rejection below is not considered to be new to the application and the application is still subject to being rejected finally at this time.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 7, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshizawa (562). The patent to Yoshizawa discloses the recited inner duct having a central passage for a cable comprising a duct tube 11a (see figure 5) having an inner and outer surface, at least one passageway 12a disposed between the inner and outer surfaces, at least one optical fiber 13a received in the passageway, a cable 10a is provided in a central passageway of the inner duct where the use of the cable for transmission is considered merely intended use, where it is considered that the hose is capable upon providing no cable in the central passage of having a fiber optic density

greater than zero due to the presence of fiber optic fibers 13a in the passageways, and a wound strand 10a provided around the duct tube provided with an outer sheath 18a.

Claims 1, 3, 7, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Trezequet. The patent to Trezequet discloses the recited inner duct having a central passage for a cable 2 comprising a duct tube 1 having an inner and outer surface, at least one passageway 3 disposed between the inner and outer surfaces, at least one optical fiber 4 received in the passageway, a cable 2 is provided in a central passageway of the inner duct where the use of the cable for transmission is considered merely intended use, where it is considered that the hose is capable upon providing no cable in the central passage of having a fiber optic density greater than zero due to the presence of fiber optic fibers 4 in the passageways, and a wound strand 7 provided around the duct tube provided with an outer sheath 8,9.

Claims 1, 3, 7, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagman. The patent to Wagman discloses the recited inner duct having a central passage for a cable 11 comprising a duct tube 12 having an inner and outer surface, at least one passageway 14 disposed between the inner and outer surfaces, at least one optical fiber 15 received in the passageway, a cable 11 is provided in a central passageway of the inner duct where the use of the cable for transmission is considered merely intended use, where it is considered that the hose is capable upon providing no cable in the central passage of having a fiber optic density greater than zero due to the presence of fiber optic fibers 15 in the passageways, and an outer sheath 20 is provided around a wound strand 17 provided around the duct tube.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6, 12-16, 18, 23, 24, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagman in view of Field. The patent to Wagman discloses all of the recited structure with the exception of forming the stranded member as a tube. The patent to Field discloses the recited inner duct comprising in one embodiment (figure 5) a central passage for a cable 74 comprising a duct tube 75 having an inner and outer surface, at least one passageway 73 disposed between the inner and outer surfaces, at least one optical fiber 72 received in the passageway, a cable 74 is provided in a central passageway of the inner duct where the use of the cable for transmission is considered merely intended use, where it is considered that the hose is capable upon providing no cable in the central passage of having a fiber optic density greater than zero due to the presence of fiber optic fibers 13a in the passageways, and in another embodiment a strand 26 is provided around the duct tube 24, where the strand can be formed as a tube to insure the safety of the wires 25 therein, thereby teaching that a closed strand can also be used. It would have been obvious to one skilled in the art to modify the wound strand in Wagman by forming the U shaped strand

as a tubular strand as suggested by Field as such is an alternate way in which a strand can be provided for extra cables and would thereby prevent the escape of fibers as could be seen by an open ended U shaped trough which could lead to failure.

Response to Arguments

Applicant's arguments filed February 23, 2004 have been fully considered but they are not persuasive. It is being argued in general that all of the rejections under 35 USC 102 are improper based upon a narrow reading of the current claim language. The claim language requires only that a duct tube have an inner and outer face, passageways between these faces, and the passageway have at least one optical fiber. The language directed toward the central passage operable for routing a transmission cable therein, is only requiring that a cable be disposed within a central passage, any method steps in a claim are not considered limiting to the final product achieved in an article claim. Also, this is present in the preamble and does not breathe life into the body of the claim, and it also deals merely with intended use for the cable running through the central passage of the duct. Clearly, all the references teach a conduit in that each has an inner central passage provided with a cable along the inner wall of that passage, and the conduit also has an outer wall. The fact that the references teach grooves in the wall to form the passageway is not persuasive when a groove would form a passageway in the conduit which forms the duct tube, and that such a passage would lie between the inner and outer faces. Therefore, regardless of what the intended use is for the cables in the prior art references being used, they all teach the required structure

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which is set forth in the claims. Applicant is reading more into the claims than exists in actual structure of the article being claimed as explained above. Also, the examiner is not confusing a fiber optic cable with an inner duct but is rather acknowledging the fact that the broad inner duct language only requires a duct that has an inner and outer wall, and all the cited references that teach a fiber optic cable have ducts formed by the elements set forth above, where a cable is disposed within the inner central passage going through these duct structures, and an outer wall. The fact that applicants ducts are intended to be used in a different manner lends itself to a method claim not an article claim. Therefore it is immaterial whether the prior art and applicants articles are used in the same fashion when both contain the same structures, and further such is more detailed an argument than the claim language supports. However, should any use steps be added to the claims in absence of any structural difference such still would not read over the art of record in that such would be considered merely intended use. With respect to the '562 patent, and the argument directed toward the slotted rod and wire being extruded tightly together, such is still directed toward language not only in the preamble, but also language which is directed toward merely intended use and is a method step in an article claim, and there is no claim language setting forth a distance between the cable and the slotted rod so such still meets the claim language. The claim language further does not require the cable to be pulled through the slotted core, therefore such is also not a pertinent argument. Applicant is not being persuasive by suggesting that the element 11 in '562 is not the equivalent of a duct when the claimed requirements of the applicants duct are to have an inner and outer surface, the inner

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surface provided with a cable, and a passageway between the inner and outer surfaces. The element 11 whether applicant considers it a hollow rod or a duct is immaterial when they both have the same structure and are therefore equivalent based upon the current claim language. It appears that applicant believes they are claiming closed passageways or that the duct has a solid outer surface however this is not the case and therefore the structure of element 11 meets the claim language. The same arguments above are made against the '088 patent, but it is noted that the same responses to the same arguments above are pertinent to this reference also and will not be repeated. The same is also true of the '212 patent. There is no argument presented as to argue the actual combining of references in the 103 rejection therefore it is considered that there is not a question of whether the subject matter in these references is combinable. It is discussed above that the references meet the claim language required for the 102 rejection which is the subject matter being discussed in regards to the 103 rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Storaasli, Matsuyama, and Register, III disclosing state of the art fiber optic cable ducts. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

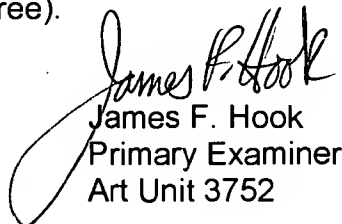
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
Art Unit 3752

JFH